



Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009

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Social Policy

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Glossary

<i>Abbreviation</i>	<i>Definition</i>
Age Pension	AP
Administrative Appeals Tribunal	AAT
A New Tax System (Family Assistance) Act 1999	FAA
A New Tax System (Family Assistance) (Administration) Act 1999	FAAA
Australian Taxation Office	ATO
Authorised Review Officer	ARO
Community Development Employment Projects	CDEP
Disability Support Pension	DSP
Family Tax Benefit	FTB
Family Tax Benefit Part A	FTB-A
Family Tax Benefit Part B	FTB-B
Goods and Services Tax	GST
Income Management Regime	IMR
Indigenous Employment Program	IEP
Newstart Allowance	NSA
Northern Territory Emergency Response	NTER
Northern Territory	NT
Parenting Payment – Partnered	PPP
Parenting Payment – Single	PPS
Social Security Act 1991	SSA
Social Security (Administration) Act 1999	SSAA
Social Security Appeals Tribunal	SSAT
Work for the Dole	WftD

Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009

Date introduced: 18 March 2009

House: House of Representatives

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Commencement: The provisions of this Bill are to commence at a variety of times as set out in the Table in section 2. In summary the provisions either start on the date of Royal Assent or on 1 July 2009.

Links: The relevant links to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill has several different purposes, firstly to amend legislation to require persons claiming Family Tax Benefit (FTB) to lodge a claim with Centrelink and remove the option of making a claim with the Australian Taxation Office (ATO) at the end of the financial year when they lodge their tax return. Secondly, to allow persons who have their welfare payments subjected to the Income Management Regime (IMR) payment arrangements to appeal to the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT). Lastly, the Bill proposes changes to payment arrangements for persons in Community Development Employment Program (CDEP). These changes are:

- new persons accessing CDEP on or after 1 July 2009 will have access to CDEP programs while receiving an income support payment,¹
- new persons accessing CDEP on or after 1 July 2009 will have access to CDEP programs and access to other additional payments under the income support system but not to CDEP supplement², and

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1. Income support payments refer to the main welfare payments paid as persons are not supporting themselves from employment such as Newstart Allowance, Parenting Payment etc.
 2. CDEP supplement is paid in addition to CDEP wages and is aimed at aiding with the costs of attending CDEP activities. The CDEP supplement rate as at April 2009 is \$20.80 per fortnight.

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- persons continuing as CDEP participants will have access to CDEP wages³ and CDEP supplement up until 30 June 2011, when all continuing CDEP participants will be transferred to a main stream income support payment, in most cases Newstart Allowance (NSA).⁴

Background

Schedule 1—Streamlining payment of family tax benefit

2008-09 Budget proposal

The government announced the proposal to no longer allow claims for both Family Tax Benefit Part A (FTB-A) and Family Tax Benefit Part B (FTB-B) through the ATO in the 2008-09 Budget.⁵ Families will no longer be able to claim FTB-A or FTB-B with the ATO in their tax assessment at the end of the year. Families will only be able to claim FTB through Centrelink or through Medicare offices.

Savings

The changes will see extra costs for Centrelink and reduced costs for the ATO. The initiative is estimated to have net savings in administrative costs of \$19.8 million in 2008-09, \$25.0 million in 2009-10, \$27.9 million in 2010-11 and \$28.5 million in 2011-12.⁶

Family Tax Benefit Part A and Family Tax Benefit Part B

FTB-A is the main income supplement payment provided to families with a qualifying dependent child and whose income is below certain limits. The FTB-A income test assesses the whole family income, that is, the income of both partners where present. Where the parent qualifies for an income support payment, they are automatically qualified for the maximum rate of FTB-A. FTB-A has its origins in the reforms of family assistance arrangement undertaken by the Howard Government when introducing the Goods and Services Tax (GST) from 1 July 2000. FTB-A replaced several previous family

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3. CDEP wages vary between CDEP communities but are generally closely aligned with Newstart Allowance payment rates. CDEP wages can be higher in remote CDEP communities recognising the extra costs of living in a remote location.
 4. Newstart allowance is payable to unemployed jobseekers and is more commonly referred to as the unemployment benefit.
 5. Australian Government, *Budget measures, budget paper No. 2 2008-09*, Commonwealth of Australia, Canberra, 2008, pp. 371–372, viewed 24 March 2009, <http://www.budget.gov.au/2008-09/content/bp2/html/index.htm>.
 6. *Budget paper No. 2 2008-09*, pp. 371–372.

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assistance programs being the Family Allowance, Family Tax Payment Part A and Family Tax Assistance Part A.⁷

FTB-B was introduced with FTB-A and provides extra assistance to single parent families and families with one main income, where one parent chooses to stay at home or balance some paid work with caring for a child. Where the parent is single, the maximum rate of FTB-B can be paid so long as income is less than \$150 000 per year. Where the claimant is partnered, the FTB-B income test is applied to the income of the lowest earning partner. Where the highest earning partner's income exceeds \$150 000 per year, FTB-B is not payable.

FTB-B was introduced with the GST in July 2000 and replaced several income supplement and tax programs; the Basic Parenting Payment (a component of the broader Parenting Payment), Guardian Allowance, Family Tax Payment Part B, Family Tax Assistance Part B, Sole Parent Rebate and Dependent Spouse Rebate (with children).

How can a person claim Family Tax Benefit

Currently, a person can claim and receive payment of FTB-A and/or FTB-B in two main ways.

1. Claiming fortnightly payments during the year

A person can claim for FTB to be paid fortnightly during the financial year with Centrelink. The fortnightly payment rate paid is based on the claimant's estimate of their annual adjusted taxable income.⁸ At the end of the year, when the tax assessments is lodged a reconciliation is then conducted between the claimant's estimate of their income and their actual income received, as determined in their tax assessment. Any underpayment is paid by the ATO and any overpayment is a debt and is recovered.

2. Lump-sum payment at the end of the year

The other way a person can claim FTB is in their tax return at the end of the year. Any FTB entitlement for the year is paid by the ATO with their tax assessment, reconciling it against any tax owing or tax payable. Persons can also claim a lump-sum payment with Centrelink after their tax assessment is done.

7. Lesley Lang, Dale Daniels and Peter Yeend, *A New Tax System (Family Assistance) Bill 1999*, Bills digest no. 175, 1998-99, Parliamentary Library, Canberra, 1999, viewed <http://www.aph.gov.au/library/pubs/bd/1998-99/99bd175.htm#Contact>.

8. Adjusted taxable income refers to net taxable income with three additional elements added back in, being foreign income, employer-provided fringe benefits and the value of net rental property losses.

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The table below sets out a breakdown of how FTB claimants claimed in the 2006–07 year.

Percentage of customers choosing fortnightly payments compared with end-of-year lump-sum payment through either the taxation system or Centrelink

Payment type	Number of customers	Per cent of customers
Tax Office lump-sum payments	154,164	7%
Centrelink lump-sum payments	62,503	3%
Centrelink fortnightly payments	1,876,044	90%

Note: Payment information refers to customers who received assistance for the 2006–07 financial year as at the end of June 2008. Customers who claimed assistance using more than one payment method during the year could be included in more than one of the above categories. For example, a customer may have received fortnightly payments from Centrelink for part of the year, as well as a lump-sum payment through the taxation system.⁹

As can be seen, 90 per cent of FTB claimants claim their FTB as fortnightly payments paid during the year based on their estimate of their income. The reason for this is that most persons value the access to regular fortnightly payments rather than waiting for a lump-sum payment at the end of the year.

Generally speaking the persons who claim FTB as a lump-sum often do so as they have higher incomes and therefore can afford to wait to the end of the year to receive payment. This particularly applies to FTB-B where a partnered person on low income can have access to FTB-B, so long as their partner's income is below \$150 000 per annum. In an answer to a question on notice from Senator Chris Evans, the reconciliation figures for the 2004–05 year showed that FTB-A claimants who claim as a lump-sum have higher incomes than those who claim FTB-A in fortnightly payments.¹⁰

9. Department of Families, Housing, Community Services and Indigenous Affairs, *Annual Report 2007-08*, Canberra, 2008, p. 208, viewed 24 March 2009, <http://www.facs.gov.au/annualreport/2008/default.htm>.

10. Senate Community Affairs Committee, Answer to Questions on Notice, Families, Community Services and Indigenous Affairs Portfolio, Supplementary Estimates 2006-07, Question 284, viewed 27 March 2009, http://www.aph.gov.au/Senate/committee/clac_ctte/estimates/bud_0607/index.htm.

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Average incomes

The table below shows the average actual adjusted taxable income (ATI) of customers who were entitled to FTB Part A at any stage for 2004-05 and who had been reconciled as at 29 September 2006.

	Average actual ATI for 2004-05*
ATO lump sum	\$69,390
Centrelink lump sum	\$54,817
Instalments	\$43,496
Fortnightly/Lump sum combination	\$51,612

* Customers with zero actual ATI are excluded in the calculation of average actual ATI.

The table below shows the average actual adjusted taxable income (ATI) of customers who were entitled to FTB Part A at any stage for 2005-06 and who had been reconciled as at 29 September 2006.

	Average actual ATI for 2005-06*
ATO lump sum	\$74,952
Centrelink lump sum	\$53,485
Instalments	\$40,722
Fortnightly/Lump sum combination	\$60,662

* Customers with zero actual ATI are excluded in the calculation of average actual ATI.

Changes to adjusted taxable income

As mentioned above, the income test for FTB uses adjusted taxable income.¹¹ The definition of adjusted taxable income will change from 1 July 2009 to add back in to net taxable income two extra amounts. These will be income salary sacrificed into superannuation and total net investment losses. This change was achieved with the passage of the *Tax Laws Amendment (2009 Measures No. 1) Act 2009*.¹²

How will FTB be able to be claimed

Under the proposed amendments in the Bill, a person will no longer be able to access FTB by claiming a lump-sum payment when lodging their tax assessment with the ATO at the end of the year. Claimants will still have the flexibility to claim FTB as a lump-sum at the end of the year, but they will have to do that through a Centrelink or Medicare office.

This only affects the minority of FTB claimants. As the table above shows, most FTB claimants (90 per cent) claim FTB in the form of fortnightly payments paid during the year.

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11. Adjusted taxable income refers to.
 12. Les Nielsen, *Tax Laws Amendment (2009 Measures No. 1) Bill 2009*, Bills digest no. 106, 2008-09, Parliamentary Library, Canberra, 2009, viewed 24 March 2009, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd106.htm#Contact>.

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Schedule 2—Review of income management regimes

Northern Territory Emergency Response

The Northern Territory Emergency Response (NTER) was announced by the then government on 21 June 2007.¹³ The NTER measures involved substantial changes to the delivery of welfare payments to certain persons. One of the key changes was introduction of the Income Management Regime (IMR) payment arrangements.

Income Management Regime

IMR payment arrangements were introduced with the passage of the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*.¹⁴ Under IMR, a welfare recipient can be required to have their welfare payments paid into an account controlled by Centrelink and access to monies from that account is provided to the individual for needs considered to be priority needs of the person and their dependants. These needs could commonly include food, accommodation costs (rent or mortgage payments), utility costs like electricity bills, costs of transport to and from work, clothing and household items.

Income Management Regime application

An individual can become subject to an IMR for one of the following reasons:

- for the protection of the child of that individual,
- if the individual is subject to the jurisdiction of the Queensland Family Responsibilities Commission and the Commission makes a request for the provisions to be applied,
- the individual is a resident of a specified area in the Northern Territory (NT), or
- the individual's child is deemed to have 'unsatisfactory attendance at school'.

The application of the IMR provisions in the NT is unique in that any person receiving welfare payments, who is living in one of the specified NTER areas in the NT, will have

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13. M Brough (Minister for Families, Community Services and Indigenous Affairs), *National Emergency Response to Protect Aboriginal children in the NT*, media release, Canberra, 21 June 2007, viewed 26 March 2009, <http://parlinfo/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=customrank;page=0;query=emergency%20Date%3A21%2F06%2F2007%20%3E%3E%2023%2F06%2F2007%20Dataset%3Apressrel;querytype=:rec=3;resCount=Default>.
 14. Peter Yeend and Coral Dow, *Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007*, Bills digest no. 27, 2007-08, Parliamentary Library, Canberra, viewed 26 March 2009, <http://www.aph.gov.au/library/pubs/bd/2007-08/08bd027.htm#Contact>.

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the IMR provisions applied to their payments. IMR provisions could also be applied to another welfare recipient residing outside one of these designated areas in the NT, under one of the other criteria, such as for child protection or child non-attendance at school reasons.

As at March 2009, there are 15 204 welfare payment recipients under IMR provisions in the NT.¹⁵ 30 people have had IMR provisions applied following a request from the Queensland Family Responsibilities Commission.¹⁶

Income Management Regime and appeals

In the 2007 Bill that originated the IMR payment arrangements,¹⁷ there were provisions that expressly excluded persons subjected to the IMR arrangements in the NT, as they resided in a designated area in the NT, from appealing against the application of the IMR provisions to the SSAT.¹⁸ In doing this, persons on IMR in the NT as they were residing in a designated area, were also excluded from appealing to the AAT. A person can only appeal to the AAT after they have appealed to the SSAT.¹⁹

The reason then stated for excluding these normal review processes for IMR affected recipients was:

The reason for these review arrangements is the unique circumstances of the emergency response, given that people still have full external merits review in relation to their substantive entitlements and rates.²⁰

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15. J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs) and W Snowdon (Minister for Defence Science and Personnel), *Progress report for the Northern Territory Emergency Response*, media release, Canberra, 22 March 2009, viewed 31 March 2009, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/progress_nter_2_2mar2009.htm.
 16. 'Cape income scheme success', Australian, 30 March 2009. [http://parlinfo/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=customrank;page=0;query=cape%20\(Date%3A30%2F03%2F2009%20%3E%3E%20\)%20Dataset%3Apressclp;querytype=:rec=0;resCount=Default](http://parlinfo/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=customrank;page=0;query=cape%20(Date%3A30%2F03%2F2009%20%3E%3E%20)%20Dataset%3Apressclp;querytype=:rec=0;resCount=Default), accessed 31 March 2009.
 17. Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007.
 18. Paragraph 144(ka) of the *Social Security (Administration) Act 1999*.
 19. Section 179 of the *Social Security (Administration) Act 1999*.
 20. Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007, *Explanatory Memorandum*, p. 45, viewed 26 March 2009, <http://parlinfo/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=customrank;page=0;query=welfare%20payment%20reform%20Date%3A01%2F03%2F2007%20%3E%3E%2030%2F09%2F2007%20Dataset%3AbillsPrevParl;querytype=:rec=0;resCount=Default>.

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This does not explain why the normal appeal rights to the SSAT and the AAT, available under the *Social Security Act 1991* (SSA) and also the *A New Tax System (Family Assistance) Act 1999* (FAA), were explicitly excluded in the originating IMR provisions Act. The probable reason was that the IMR provisions were then unique, had never been previously applied, would probably be contentious and the government did not want the process slowed or compromised in any way by a large number of appeals. This could have especially applied in the NT, where all persons on a welfare payment in designated areas in the NT were placed under IMR arrangements. In other cases, the IMR provisions were being applied on a case-by-case basis. The potential for appeals was large as under the IMR arrangements people would no longer be directly receiving all of their welfare payments.

Review of the Northern Territory Emergency Response

The Rudd Government announced a review of the NTER arrangements in June 2008.²¹ The NTER Review Board presented its report on 30 September 2008.²² One of the recommendations in the Review Board's report was that all welfare recipients should have access to external merits review.²³ Currently, under the legislation there are rights of appeal to the original decision maker and then to the Centrelink Authorised Review Officer (ARO) but that is where the appeal steps stop.

Application of Income Management Regime arrangements in designated areas in the Northern Territory and individuals' capacity to appeal their application

The application of IMR provisions is largely done on an area basis in the NT, that is, persons living in a designated area receiving a relevant IMR affected welfare payment have the IMR provisions applied.²⁴ This Bill proposes to allow individuals affected by the IMR provisions in designated areas in the NT the right to appeal to the SSAT and then to the AAT. The most fundamental question will be: will individuals subject to IMR because they live in one of the designated areas in the NT be able to appeal the application of the IMR provisions to themselves?

Section 123UG of the *Social Security (Administration) Act 1999* (SSAA) empowers the Secretary to exempt a person in a designated IMR area in the NT from the IMR

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21. J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs), *NT Emergency Response Review Board*, media release, Canberra, 6 June 2008, viewed 27 March 2009, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/nt_emergency_response_06jun08.htm.
 22. Northern Territory Emergency Response Review Board, Canberra, 30 September 2008, viewed 27 March 2009, http://www.nterreview.gov.au/docs/report_nter_review/default.htm.
 23. *Review Board Report*, 2.1 Measure 1: Welfare reform and employment.
 24. Section 123UB of the *Social Security (Administration) Act 1999*.

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provisions. However, while the list of factors that the Secretary must take into consideration under section 123UG are not expressed to be an exhaustive list, by implication they may limit the Secretary's ability to take into account other factors in the granting of an exemption – see below.

123UG. Exempt Northern Territory persons

123UG.(1) Each relevant Northern Territory area

123UG.(1) The Secretary may, by written notice given to a person, determine that the person is an exempt Northern Territory person in relation to each relevant Northern Territory area for the purposes of this Part.

123UG.(2) In deciding whether to make a determination under subsection (1), the Secretary must have regard to the following matters:

- (a) the person's family and kinship relationships;
- (b) the area in which the person is usually physically present overnight;
- (c) the area or areas in which the person's assets are located;
- (d) if the person has travelled outside the relevant Northern Territory areas:
 - (i) the frequency of that travel; and
 - (ii) the duration of that travel; and
 - (iii) the reason for that travel;
- (e) the address of the place of residence of the person last known to the Secretary;
- (f) the postal address of the person last known to the Secretary;
- (g) whether the person has been physically present in any of the relevant Northern Territory areas on a temporary basis;
- (h) if the person has been physically present in any of the relevant Northern Territory areas on a temporary basis—the circumstances that resulted in the person being so physically present in the area concerned.

Section 123UG does not empower the Secretary to exempt an IMR affected person in a designated area in the NT just because the individual thinks the IMR provisions should not apply to them. Essentially, section 123UG empowers the Secretary to exempt a person where it is considered the person is not resident in the IMR designated area in the NT. The granting of appeal rights to the SSAT and the AAT for IMR affected persons in designated areas in the NT will not empower these external appeal bodies to exempt a person from IMR, outside the matters specified in section 123UG.

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Schedule 3—Community Development Employment Projects Scheme

Background

The CDEP programme commenced in 1977. Under CDEP, members of a participating CDEP community or organisation can voluntarily forgo any individual Centrelink income support payment (except Abstudy or full time student Youth Allowance) for a group wages grant paid to the community. CDEP payment arrangements then involve a consolidated amount of welfare payment sent to a CDEP community based on the number of CDEP community members on welfare payments. The CDEP community then hands out CDEP wages to individuals in the community on the basis of work done or accepted activities undertaken in the community. Although CDEP has been referred to as a ‘Work for the Dole’ (WftD) scheme, there are significant differences including the ability of all welfare recipients to participate in CDEP activities. There is also a CDEP supplement²⁵ paid on top of CDEP wages that is not available to NSA recipients. There is a WftD supplement,²⁶ but that is only paid to unemployed jobseekers undertaking WftD activities.

CDEP wages

CDEP wages are paid by a different method and often different amounts to those receiving mainstream income support payments under the SSA. There is no set rate or amount for CDEP wages and amounts paid to individuals and they can vary for individuals inside a CDEP community and between CDEP communities. Some CDEP participants may be receiving more income than just CDEP wages (and also from other income sources like sale of art works) than they would otherwise receive when on an income support payment.

CDEP payment arrangements commenced to be phased out with the Northern Territory Emergency Response reforms of 2007

As part of the NTER, all NT CDEP programs were informed that from 1 July 2007 their funding agreements would be reduced from 12 to three months. On 23 July 2007, the Howard government announced further changes to the CDEP arrangements in the NT including that the program will be replaced with ‘real jobs, training and mainstream employment programmes’.²⁷ One of the most significant elements in these

25. CDEP supplement is \$20.80 per fortnight as at April 2009.

26. WftD supplement is \$20.80 per fortnight as at April 2009.

27. M Brough (Minister for Families, Community Services and Indigenous Affairs) and J Hockey (Minister for Employment and Workplace Relations), *Jobs and Training For Indigenous People In The NT*, media release, Canberra, Australia, 23 July 2007, viewed 27 March 2009, <http://parlinfo/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=customrank;page=0;query=hockey%20Date%3A20%2F07%2F2007%20%3E%3E%2031%2F07%2F2007%20Dataset%3Apressrel;querytype=:rec=1;resCount=Default>.

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announcements was the start of the moving of CDEP participants from CDEP wages to mainstream income support payments and the cessation of CDEP payment arrangements, that is, group amounts paid to CDEP communities. Persons who were paid CDEP wages were to be moved to receiving individual welfare payments, as applies outside CDEP communities. This was considered necessary given the IMR provisions that were introduced for the NTER reforms. The impact of the IMR provisions would be limited if welfare payments to CDEP participants were not included in the welfare quarantining. The fact sheet accompanying the media release at the time stated:

moving CDEP participants onto income support will allow a single system of quarantining to apply to welfare payments. This initiative will stem the flow of cash going towards alcohol and substance abuse and ensure that money meant for children's welfare is used for that purpose.²⁸

Cessation of the cancellation of CDEP closure done early by the Rudd government

Shortly after being elected in November 2007, the Rudd government announced the cessation of the cancellation of CDEP arrangements.²⁹ The announcement essentially placed a moratorium on the cessation of the CDEP arrangements in the NT that had been commenced by the Howard government from mid-2007. IMR arrangements were continued in some CDEP communities to reduce the amount of cash from government payments that could be spent on drugs, alcohol and gambling in communities. The government did commit to continue the reform of CDEP arrangements.³⁰

Rudd government CDEP reforms

The government announced reforms to CDEP arrangements on 19 December 2008.³¹ The Minister stated in announcing the reforms:

This announcement follows an extensive national consultation process, involving 1600 people in 56 locations around Australia. The Government also received 86 written submissions.³²

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28. *Jobs and Training For Indigenous People In The NT.*
 29. J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs), *Building stronger Indigenous communities*, media release, Canberra, 10 December 2007, viewed 27 March 2009, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/indigenous_communities_10dec07.htm.
 30. *Building stronger Indigenous communities.*
 31. J Macklin (Minister for Families, Housing, Community Services and Indigenous Affairs), *Strengthening Indigenous employment opportunities*, media release, Canberra, 19 December 2009, viewed 27 March 2009, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/indig_employ_19dec08.htm.

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Essentially the reforms involve the phasing out of CDEP payment arrangements and persons not being paid CDEP wages but paid mainstream income support payments commencing 1 July 2009. These SSA income support payments will mainly be NSA but could also be Parenting Payment – Partnered (PPP),³³ Parenting Payment – Single (PPS),³⁴ Age Pension and Disability Support Pension (DSP).³⁵

Aims of the Rudd government CDEP reforms

The aim of the CDEP payment reforms is to eventually have all unemployed Indigenous jobseekers on mainstream income support payment arrangements, not on CDEP payment arrangements. The government has said:

The reforms are key to making progress on the Government's aim of halving the employment gap between Indigenous and non-Indigenous Australians within a decade.

Meeting our target means that an additional 100,000 Indigenous Australians will need to find and keep jobs over the next 10 years, requiring major reforms to Indigenous and mainstream employment services. Employment contributes strongly to personal, social and economic development.³⁶

So the Government doesn't want to continue the CDEP payment arrangements but wants unemployed Indigenous jobseekers provided with mainstream income support payments and requirements and assistance.

The CDEP reforms are starting on the same date as the commencement of the new employment assistance arrangements - Job Services Australia.³⁷ The government wants unemployed Indigenous jobseekers on income support payments where they are required

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32. *Strengthening Indigenous employment opportunities.*
 33. Parenting Payment – Partnered is payable to partnered person who has at least one child aged under 6 who is wholly or substantially in their care.
 34. Parenting Payment – Single is payable to a sole parent who has at least one child aged under 8 who is wholly or substantially in their care.
 35. Disability Support Pension is payable to a person with an impairment of 20 points or more who is assessed as not being able to work or be retrained for work of at least 15 hours per week within two years because of their illness, injury or disability.
 36. *Strengthening Indigenous employment opportunities.*
 37. B O'Connor (Minister for Employment Participation), *\$4 billion new employment services – Job Services Australia*, media release, Canberra, 1 April 2009, viewed 16 April 2009, http://www.deewr.gov.au/Ministers/OConnor/Media/Releases/Pages/Article_090401_172306.aspx.

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to look for work in the open labour market and can also access the benefits of the \$764 million committed over five years to the Indigenous Employment Program (IEP).³⁸

CDEP wages being phased out

The provisions in this Bill provide for two main elements from 1 July 2009:

- new starters of CDEP programs will receive income support payments and still be entitled to access CDEP programs, and
- continuing CDEP participants will continue to receive CDEP wages from CDEP providers up until 30 June 2011 and in some cases also receive the CDEP supplement.

CDEP reforms

Other features of the reforms to CDEP arrangements from 1 July 2009 are:

- \$764 million is committed to the IEP for services more responsive to the specific needs of Indigenous jobseekers, Indigenous businesses and employers,
- CDEP will cease in non-remote areas with established economies,
- in areas of established economies Indigenous jobseekers will be assisted by IEP and the new universal employment services (also commencing from 1 July 2009), and
- new employment services providers will have contract requirements to provide an Indigenous employment strategy.³⁹

Comment

The CDEP program and payment arrangements have been a matter of vigorous debate for many years. One of the main claimed virtues of CDEP arrangements is that CDEP currently represents the only opportunity to obtain work in which participants can achieve a sense of satisfaction in contributing to the wellbeing of their communities. This especially applies in remote communities where there are very limited or no open labour market employment opportunities. The CDEP payment arrangements have allowed communities to pool income resources and to initiate and provide community development and maintenance work and also to fund community activities.

The criticism of CDEP is that it doesn't generate paid employment in the open labour market and the CDEP wages paid are often very low compared to wage rates for the same work in the open labour market. CDEP had become a destination rather than a training phase or a transition phase to employment in the open labour market and with the resultant self-support. This was certainly the view of the Howard government:

38. *Strengthening Indigenous employment opportunities.*

39. *Strengthening Indigenous employment opportunities.*

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"While acknowledging the role that CDEP has played in many communities, it has become a destination for too many. We need to do much better to improve the long-term prospects for economic independence for those living in the remote areas of the Northern Territory."⁴⁰

The decline of CDEP arrangements initiated by the Howard government in late 2007, followed by the partially reversed CDEP arrangements of the Rudd government in 2008 and onwards has led to confusion in CDEP communities.⁴¹ However, the NTER Review Board report said:

The single most effective step taken over the past 12 months to secure non-CDEP employment for the Aboriginal residents of the communities associated with the NTER, has been the decision by the Australian and Northern Territory Governments, along with the new shire councils, to discontinue subsidising their services with CDEP and paying full wages with full entitlements to their employees.

This step alone has earmarked funding for the transition from CDEP to 1536 jobs in Australian Government funded service delivery positions and 400 in Northern Territory Government positions. By June 2008 former CDEP workers had taken up just over two-thirds of these jobs (1300). The various programs supporting these initiatives are commended and should be continued.⁴²

In regards to CDEP, the NTER Review Board report stated:

While policy makers and social researchers will continue to engage in a debate about the place and value of CDEP in any future welfare reform agenda, the Board would strongly suggest that for many Aboriginal people, CDEP currently represents the only opportunity to obtain work in which they can achieve a sense of satisfaction in contributing to the wellbeing of their communities.

Any government will have difficulty in transitioning communities, especially remote communities from the long-standing passive welfare CDEP arrangements to open employment. Many CDEP arrangements are in remote communities and have been in place in these remote places for many years. These remote communities are places of very limited, or even zero places of open employment opportunity and participation. This is mainly due to their remoteness and their associated lack of economic activity. For a long time, work and community functions have been funded by CDEP and performed by CDEP

40. M Brough (Minister for Families, Community Services and Indigenous Affairs), and J Hockey (Minister for Employment and Workplace Relations), *Jobs and training for Indigenous people in the NT*, media release, Canberra, 23 July 2007, viewed 30 March 2009, <http://parlinfo/parlInfo/search/display/display.w3p;adv=yes;db=;group=;holdingType=;id=;orderBy=customrank;page=0;query=brough%20and%20CDEP%20Dataset%3Apressrel;querytype=;rec=9;resCount=Default>.

41. Northern Territory Emergency Response Review Board, *Review Board Report*.

42. Northern Territory Emergency Response Review Board, *Review Board Report*.

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paid workers, but paid at reduced pay rates than normally applies in the open labour market. To transition these remote communities to open employment and to create open employment jobs will require the expenditure of public monies.

The revised CDEP payment arrangements presented in this Bill essentially mean a softer and slower phase out of CDEP payment arrangements than previously envisaged by the Howard government.

Main provisions

Schedule 1—Streamlining payment of family tax benefit

A New Tax System (Family Assistance) Act 1999

Item 1 deletes subclause 20(3) of Schedule 1 of the *A New Tax System (Family Assistance) Act 1999* (FAA). This subclause ensured that where a person claimed FTB with the ATO, then any arrears of child support paid to that person for that year was regarded in their rate calculation of FTB for the year. Child support maintenance received by a person affects their rate of FTB payable under the maintenance income test. Now that people will not be able to claim FTB with the ATO, the clause is no longer required. Maintenance income received will still be counted as income under the maintenance income test for any rate of FTB payable, as calculated by Centrelink.

A New Tax System (Family Assistance) (Administration) Act 1999

Items 2 to 5 basically remove references to the ATO in parts of the *A New Tax System (Family Assistance) (Administration) Act 1999* (FAAA) that are there as the ATO was a party to the FTB claim and assessment processes.

Items 6 to 10 make both consequential and housekeeping amendments to section 14 of the FAAA, which deals with a person lodging a FTB claim for a past period. Under section 14 a person can claim FTB as a lump-sum up to two years after the end of the year for which they are claiming. For example, a person claiming FTB for the 2009-10 year can lodge a claim up to the end of the 2011-2012 year.

Item 11 repeals paragraph 118(1)(d) which refers the ATO as a party to decisions concerning FTB.

Item 12 ensures decisions made by the ATO on FTB claims before 1 July 2009 have their rights reserved and claimants affected can have decisions reviewed under the FAAA.

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Schedule 2—Review of income management regimes

Social Security (Administration) Act 1999

Item 1 repeals section 144(ka) from the SSAA. Section 144(ka) is the section in the SSAA that excludes persons, subject to the IMR provisions because they live in a designated area in the NT, from being able to access external review of IMR decisions.

Schedule 3—Community Development Employment Projects Scheme

Social Security Act 1991

Item 1 repeals subsections 1188B(1) and (2) of the SSA which currently defines who is a CDEP participant. The proposed replacement subsection 1188(B)(1) basically details that a person can only be a CDEP scheme participant if they were entitled to receive a CDEP payment on 1 July 2009. This means CDEP scheme participants will not be entitled to CDEP scheme wages if they start being a participant on or after 2 July 2009.

Concluding comments

The move to remove the ATO as a place where a FTB claim can be lodged is essentially streamlining of FTB claim processes and an administrative cost cutting measure. 90 per cent of FTB claimants currently claim through Centrelink, either by way of fortnightly payments or as a lump-sum at the end of the year.⁴³

The move to allow IMR affected welfare recipients residing in designated areas in the NT access to external review will only allow these recipients to appeal to the SSAT (and the AAT), challenging the assessment that they are a resident of a designated area. It will not change the application of IMR provisions in the designated areas in the NT very much.

The phase out of the CDEP scheme wages payment arrangements is gradual. Those on a CDEP scheme payment arrangement on 1 July 2009 will continue – new CDEP scheme participants from 2 July onwards will be required to individually qualify for an income support payment. It is a more gradual phase out of CDEP scheme payment arrangements than originally envisioned by the previous Howard government.

43. Department of Families, Housing, Community Services and Indigenous Affairs, *Annual Report 2007-08*.

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